

Serial No. 09/720,252

Applicant: Regine Heilbronn

REMARKS**Status of the claims**

Claims 60-62, 72, 77-79 are canceled. Claims 63-70, 73, 80 and 81 have been amended. Upon entry of the amendments, claims 63-71, 73-76 and 80-81 will be pending in the case.

Rejection of the claims under 35 USC §102

Claims 61-64, 67-68, 72 and 77-79 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Dong, *et al.* for reasons of record. The Action maintains that Dong provides detailed teachings for generating a recombinant herpes vector using well-known protocols and consideration of references indicating that *rep* and *cap* can be used to generate recombinant herpes viral vectors having the *rep* and *cap* genes. The Action further notes that Applicant has not provided supporting evidence for statements made with regard to propensity of *rep-cap* genes to be excised from the genome under replication conditions in the R7020 genome.

Applicant maintains traversal of the rejections; however, without prejudice or disclaimer, and in the interest of expediting prosecution, Applicant has canceled claims directed to a recombinant herpes vector comprising the *rep-cap* genes.

Applicant respectfully requests withdrawal of the rejection.

Rejection of Claims under 35 USC §112

Claims 65, 66 and 69 are rejected under 35 U.S.C. §112, second paragraph as indefinite for failing to particularly point out and distinctly claim the subject matter regarded by Applicant as the invention.

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Claim 65 has recited the UL9 gene as non-essential. Applicant has removed this description of the UL9 gene with respect to being essential to herpes virus replication.

Claims 66 and 69 have been amended to correct improper antecedent basis.

Duplicate Claim

Claim 80 is objected to as being a substantial duplicate of claim 69. Applicant has amended claim 80 to stand as an independent claim to the novel recombinant HSV-1 virus deposited under ECACC accession number V97111302.

Objection under 37 CFR 1.75(c)

Claim 81 is objected to as being in improper dependent form for failing to limit the subject matter of a previous claim. Applicant has amended claim 81 as an independent claim, thereby removing improper dependency from a preceding claim.

Amendments to the claims

Applicant has amended claims 70-71 and 70-73 to change dependency from a rejected base claim. Additionally, claims dependent on a claim directed to a *rep-cap* rHV vector have been amended to depend on claim 70, a process claim that is amended to an independent claim.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of all pending rejections with allowance of claims 63-71, 73-76 and 80-81. If upon consideration of the foregoing arguments, the Examiner is not inclined to allow the application, Applicant respectfully requests a personal interview with the Examiner and Applicant's attorney and invites the Examiner to call the undersigned at the telephone number indicated below.

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Respectfully submitted,

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